THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
SEP 16 2014
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Judge

Appellate Case No. 2014-001780

SEBRINA LEIGH-JONES,

Respondent,

v.

EVE F. OLASOV,

Appellant.

RESPONDENT'S MEMORANDUM IN RESPONSE TO COURT INQUIRY REGARDING APPEALABILITY

The Court has directed the parties to submit memoranda addressing the issue of appealability. The order from which Eve Olasov ("Olasov") and Luxury Land And Homes, Inc. ("LLH") appeal is not presently appealable. Specifically, Judge Young's Order on appeal appointed a custodian pursuant to S.C. Code Ann. § 33-14-320 (2013). This Court has held that a "court's order to appoint a custodian [pursuant to § 33-14-320] is interlocutory and not immediately appealable." *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 480, 602 S.E.2d 83, 87 (Ct. App 2004); *see also, Southeastern Hous. Found. v. Smith*, 380 S.C. 621, 641, 670 S.E.2d 680, 691 FN16 (Ct. App. 2008) ("the appointment of a custodian, as contrasted with the appointment of a

receiver, is an interlocutory order and thus not immediately appealable"). Thus, this appeal should be dismissed.

BACKGROUND

The first of these related cases, filed in August 2013 by Sebrina Leigh-Jones ("Leigh-Jones"), seeks dissolution of LLH, a real estate brokerage in which Leigh-Jones and Olasov each owns a half interest. Leigh-Jones purchased fifty percent of the shares of LLH in October 2012. In October of 2012, Olasov acted as the broker-in-charge ("BIC") for LLH.

Beginning in the spring of 2013, serious disagreements developed between Leigh-Jones and Olasov (the "parties") as to the management of the company and their respective obligations to each other and the company. In response to Leigh-Jones' dissolution filing, Olasov responded with counter-claims and the filing of a second action with claims against Leigh-Jones and other persons and entities as listed in the caption for this appeal.

On January 9, 2014, Leigh-Jones filed a Motion to Appoint a Custodian pursuant to Section 33-14-320 of the South Carolina Code of Laws. Section 33-14-320 of the South Carolina Code authorizes "a court in a judicial proceeding brought to dissolve a corporation [to] appoint . . . custodians to manage, the business and affairs of the corporation." S.C. Code (Ann.) §33-14-320 (2013).

The Court presided over a hearing on various motions, including the Motion for Appointment of a Custodian, on June 10 and 11, 2014. At the end of the second day of the hearings, Leigh-Jones's attorneys argued that the Court should appoint a custodian, specifically, an interim broker-in-charge ("BIC") for the supervision of Leigh-Jones and

in the interest of the public. The motion was based on evidence at the hearing of (i) the disintegration of the professional relationship between the parties to the point that they are adversarial and (ii) Leigh-Jones' need for professional support and supervision as a licensed realtor. The Court found that Leigh-Jones and Olasov have irreconcilable differences as to management issues and an irreparable working relationship.

Pursuant to Section 33-14-320, the Court issued an Order appointing a custodian for the statutory BIC supervision of Leigh-Jones as a real estate agent and for the protection of the public. Importantly, the interim BIC was appointed to manage the daily affairs of the corporation, not to wind up or liquidate the business and affairs of the corporation. Olasov and LLH now seek to immediately appeal this interlocutory Order.

ARGUMENT

"The right of appeal arises from and is controlled by statutory law." *N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986). Appealability is generally governed by S.C. Code Ann. § 14-3-330. This Court has appellate jurisdiction to consider a "final judgment," an intermediate judgment "involving the merits," an order "affecting a substantial right . . . when such order . . . (a) in effect determines the action and prevents a judgment from which an appeal might be taken . . . or (c) strikes out an answer or any part thereof or any pleading in an action, or an "interlocutory order or decree in a court of common pleas . . . granting, continuing, modifying, or refusing the appointment of a receiver." S.C. Code Ann. § 14-3-330. Interlocutory orders are otherwise not immediately appealable. *See, e.g., Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000); *Senter v. Piggly Wiggly*

Carolina Co., 341 S.C. 74, 533 S.E.2d 575 (2000); *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000). None of these provisions is applicable here.

"An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005). "The final judgment rule serves the laudatory goal of preventing piecemeal review of matters that are merely steps toward a final judgment. In light of the policy underpinnings of the final judgment rule, exceptions should be recognized cautiously." *Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004), *opinion on rehearing at* 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005). *See Ballenger v. Bowen,* 313 S.C. 476, 477, 443 S.E.2d 379, 380 (S.C. 1994) ("A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial.").

An order "involves the merits," as that term is used in S.C. Code Ann. § 14-3-330(1) and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense. *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E.2d 809 (1995); *Mid-State Distribs. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993); *Knowles v. Standard Sav. & Loan Ass'n*, 274 S.C. 58, 261 S.E.2d 49 (1979). An order is interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. *Mid-State Distribs.*, 310 S.C. at 334-35, 426 S.E.2d at 780 (holding order denying motion to dismiss case based on lack of personal jurisdiction was not immediately appealable, as the litigant had "not arrived at the end of

the road"); *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones, & Goulding, Inc.*, 351 S.C. 459, 570 S.E.2d 197 (Ct. App. 2002).

THIS COURT HAS HELD THAT THE APPOINTMENT OF A CUSTODIAN PURSUANT TO S.C. CODE ANN. § 33-14-320 (2013) IS INTERLOCUTORY AND NOT IMMEDIATELY APPEALABLE.

This Court has held that the appointment of a custodian pursuant to S.C. Code Ann. § 33-14-320 (2013) is interlocutory and not immediately appealable. In *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 480, 602 S.E.2d 83, 87 (Ct. App 2004), the appellants asserted that the appointment of a custodian pursuant to Section 33-14-320 was immediately appealable and that the appointment of a custodian has the same effect as the appointment of a receiver. This Court rejected that argument reasoning that "[r]eceivers and custodians are distinguishable." *Id.*

> A receiver's duty is to wind up and liquidate the business and affairs of a corporation, while custodians manage the affairs of the corporation. *See* S.C. Code Ann. 33-14-320 (Supp. 2003). A receiver, in performing its duties, may: Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of this State. However, a custodian may: Exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.
> S.C. Code Ann. § 33-14-320(c)(2).
>
> ...
>
> The refusal of a trial court to appoint a receiver should be immediately appealable because of the potential harm in not having an unbiased party to protect a corporation's assets. We do not believe the same level of harm attends an order to appoint a custodian. The custodian in this matter was appointed specifically for the purposes of "overseeing ongoing projects and to allocate man and machinery among the proposed projects to maximize profits."

Id. Based on this reasoning, the Court held that a "court's order to appoint a custodian [pursuant to § 33-14-320] is interlocutory and not immediately appealable." *Id.*; *see also*, *Southeastern Hous. Found. v. Smith*, 380 S.C. 621, 641, 670 S.E.2d 680, 691 FN16 (Ct. App. 2008) ("the appointment of a custodian, as contrasted with the appointment of a receiver, is an interlocutory order and thus not immediately appealable").

Here, like *Shapemasters*, the Court appointed a custodian pursuant to S.C. Code Ann. § 33-14-320 "for the statutory supervision of Leigh-Jones as a real estate agent and for the protection of the public." (Order p. 2). Similarly, in *Shapemasters*, the custodian was appointed "specifically for the purposes of 'overseeing ongoing projects and to allocate man and machinery among the proposed projects to maximize profits.'" *Shapemasters* 360 S.C. at 480, 602 S.E.2d at 87. The custodians in this case and *Shapemasters* were not appointed to wind up and liquidate the business and affairs of a corporation like a receiver. As such, Judge Young's Order Appointing a Custodian is interlocutory and not immediately appealable, and this appeal should be dismissed.

CONCLUSION

The orders from which Olasov and LLH appeal are not presently appealable. Accordingly, the appeal should be dismissed.

HAYNSWORTH SINKLER BOYD, P.A.

Wm. Howell Morrison
Stafford J. McQuillin III
134 Meeting Street, 4th Floor
Charleston, SC 29401
(843) 722-3366
Attorneys for Respondent
Sebrina Leigh-Jones

September 8, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Judge

Appellate Case No. 2014-001780

SEBRINA LEIGH-JONES,

Respondent,

v.

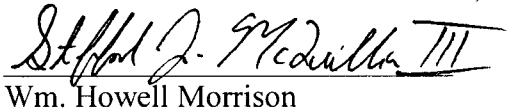
EVE F. OLASOV,

Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Memorandum in Response to Court Inquiry Regarding Appealability on Defendant-Appellant by depositing a copy of same in the United States Mail, postage prepaid, on September 8, 2014, addressed to her attorneys of record, Richard S. Rosen, John E. Rosen and Daniel Francis Blanchard, Rosen, Rosen & Hagood, LLC, 151 Meeting Street, Suite 400, Charleston, South Carolina 29401.

HAYNSWORTH SINKLER BOYD, P.A.



Wm. Howell Morrison
Stafford J. McQuillin III
134 Meeting Street, 4th Floor
Charleston, SC 29401
(843) 722-3366
Attorneys for Respondent
Sebrina Leigh-Jones

September 8, 2014

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

134 MEETING STREET, THIRD FLOOR (29401-2240)
POST OFFICE BOX 340 (29402-0340)
CHARLESTON, SOUTH CAROLINA
TELEPHONE 843.722.3366
FACSIMILE 843.722.2266
WEBSITE www.hsblawfirm.com

STAFFORD J. MCQUILLIN III
DIRECT DIAL NUMBER 843.724-1120
EMAIL mmcquillin@hsblawfirm.com

September 8, 2014

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Sebrina Leigh-Jones v. Eve F. Olasov
Appellate Case No. 2014-001780

Dear Ms. Kitchings:

Enclosed please find an original and one copy of Respondent's Memorandum in Response to Court Inquiry Regarding Appealability in the above-referenced matter. Please file the Memorandum and return a file-stamped copy to me in the enclosed envelope.

By copy of this letter, I am serving Appellant's counsel with a copy of the Memorandum.

Yours very truly,

Stafford J. McQuillin III

SJM/kmg
Enclosures
cc (w/encl.): Richard S. Rosen, Esq.
Daniel F. Blanchard, III, Esq.
John E. Rosen, Esq.